*Heurtebise v. Reliable Business Computers, Inc.**

At first glance, *Heurtebise v. Reliable Business Computers, Inc.*,[1] is a run-of-the-mill contracts case. In this case, the Michigan Supreme Court's only holding is that an employee handbook did not create a binding contract where the employer "did not intend to be bound by any of the provisions contained in the handbook."[2] Yet, there is much more to this case than its non-controversial holding. The real issue in *Heurtebise* was whether a prospective arbitration agreement can be enforced to resolve an employment discrimination claim arising under Michigan's civil rights laws.[3] Although no decision was rendered with respect to this issue, strong dicta by Justice Michael F. Cavanagh indicates that such agreements might be unenforceable in Michigan.[4]

In *Heurtebise*, the plaintiff, Theresa Heurtebise, brought suit under the Michigan Civil Rights Act[5] and sought money damages, alleging that the defendant, Reliable Business Computers, Inc., fired her because of her gender. [6] During her employment, the plaintiff violated company policy by taking lunch breaks that exceeded one hour. The plaintiff was ultimately terminated for violating this policy, while a male coworker who also took long lunch breaks did not receive similar discipline.[7]

The company moved to dismiss the plaintiff's suit or, in the alternative, to compel arbitration.[8] In support of this motion, the company introduced evidence that the plaintiff agreed to be bound by the terms and policies contained in the employee handbook and that this handbook provided that all claims involving money damages would be submitted to binding arbitration. The trial court denied both motions holding that enforcement of the arbitration agreement in this case violated Michigan public policy.[9]

A Michigan appellate court reversed, holding that the handbook created a binding contract and that enforcing an agreement to arbitrate an

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* 550 N.W.2d 243 (Mich. 1996).

[1] *See id.*

[2] *Id.* at 247.

[3] *See* MICH. COMP. LAWS § 37.2101 *et seq.* (1985).

[4] *See Heurtebise*, 550 N.W.2d at 247-258. Justice Cavanagh felt obligated to resolve this issue because it was addressed by the court of appeals. *See id.* at 247.

[5] *See* MICH. COMP. LAWS § 37.2101 *et seq.* (1985).

[6] *See Heurtebise*, 550 N.W.2d at 245.

[7] *See id.*

[8] *See id.* The motion to dismiss was brought pursuant to M.C.R. 2.116(C)(4); the motion to compel arbitration was brought pursuant to M.C.R. 3.602. *See id.*

[9] *See id.* at 246.

employment discrimination claim did not violate Michigan public policy.[10] As support for its decision, the appellate court cited the United States Supreme Court's decision in *Gilmer v. Interstate/Johnson Lane Corp.*,[11] as standing for the proposition that no public policy existed against enforcing arbitration agreements involving civil rights claims.[12] As further support, the court of appeals noted that, because arbitration is a desirable alternative to litigation, "arbitration clauses are to be liberally construed with any doubts to be resolved in favor of arbitration."[13] The court of appeals concluded that enforcement of this arbitration agreement only selected the forum in which the plaintiff could have her claim resolved and that this did not diminish her rights under the Michigan Civil Rights Act.[14]

The Michigan Supreme Court reversed. The court held that the employee handbook did not create a binding contract because the company did not intend to be bound by the handbook and, consequently, did not intend to be bound by the arbitration agreement.[15] Therefore, there was no need to decide whether the arbitration agreement was enforceable to resolve the employment discrimination claim. Nonetheless, Justice Cavanagh felt compelled to address this issue, concluding that the arbitration agreement was unenforceable.[16]

In arriving at this conclusion, Justice Cavanagh answered three questions. First, can an employee be compelled to arbitrate her federal discrimination claim where the arbitration agreement is contained in an individual employment contract? Second, is Michigan more committed to protecting an employee's right to pursue discrimination claims in a judicial forum than its federal counterpart? And finally, is Michigan pubic policy violated by enforcing prospective arbitration agreements involving statutory civil rights claims?[17]

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[10] *See* Heurtebise v. Reliable Business Computers, Inc., 523 N.W.2d 904 (Mich. Ct. App. 1994).

[11] 500 U.S. 20 (1991).

[12] *See Heurtebise*, 523 N.W.2d at 906.

[13] *Id.* (citing Chippewa Valley Schools v. Hill, 233 N.W.2d 208 (Mich. Ct. App. 1975).

[14] *See id.*

[15] *See Heurtebise*, 550 N.W.2d at 247. The court's decision is based on evidence that was not part of the record before the court of appeals. This evidence consisted of the entire employee handbook. The court of appeals only had a portion of the handbook before it. The omitted portion of the handbook critical to the Michigan Supreme Court's decision was a portion that stated that the company could modify any of the policies contained in the handbook "at its sole discretion." *Id.*

[16] *See id.* at 258.

[17] *See id.* at 248.

Justice Cavanagh examined whether a federal court would compel an employee to arbitrate her federal discrimination claim where the arbitration agreement is contained in an individual employment contract. He argued that the federal courts were not in agreement. His analysis began with the Supreme Court's decision in *Gilmer*.[18]

In *Gilmer*, an employee sued his former employer under the Age Discrimination in Employment Act (ADEA),[19] claiming that he was discharged because of his age. The employer moved to compel arbitration because the employee, as a condition of employment, signed a securities registration form that contained a mandatory, binding arbitration agreement. The Supreme Court held that the employee was required to submit his discrimination claim to binding arbitration and could not bring suit in a judicial forum.[20] In arriving at this conclusion, the Court held that the Federal Arbitration Act (FAA) [21] applied and that it established a strong federal policy in favor of arbitration.[22] In short, the *Gilmer* decision stands for the following proposition: statutory employment discrimination claims will be subject to mandatory, binding arbitration agreements unless it is shown that Congress specifically disapproved of allowing the particular

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[18] Prior to the Supreme Court's decision in *Gilmer*, a general assumption existed that employment discrimination claims were not subject to mandatory, binding arbitration agreements. This assumption was based upon the Supreme Court's decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974). In *Alexander*, the employee claimed that he had been discharged because of his race. He brought suit in federal district court under Title VII of the Civil Rights Act of 1964, (Title VII) 42 U.S.C. § 2000e (1994), but he also filed a grievance with his union. The grievance was submitted to binding arbitration, and the arbitrator ruled that the discharge was justified. The Supreme Court held that the employee was entitled to seek judicial relief for his Title VII claim, notwithstanding the fact that the arbitrator found his discharge to be justified. Among other things, the Court was concerned that arbitrators might lack the requisite experience to decide claims brought under Title VII and that typical arbitration procedures are either inadequate or unavailable. *See id.* at 52-58.

After *Alexander v. Gardner-Denver Co.* was decided, some commentators argued that an arbitration agreement did not prohibit an employee from litigating his employment discrimination claim in a judicial forum. *See* Stephen P. McGowan & Robert J. Schiavoni, *The Steelworkers' Trilogy and the Coal Miners' Trilogy: Is Discrimination an Exception to the Rule?*, 91 W. VA. L. REV. 737, 761 (1989); Nicholas W. Loebenthal, *The Arbitrability of ADEA Claims: Toward an Epistemology of Congressional Silence*, 23 COLUM. J.L. & SOC. PROBS. 67, 86 (1989).

[19] *See* 29 U.S.C. § 623(a)(1) (1994).

[20] *See Gilmer*, 500 U.S at 35.

[21] *See* 9 U.S.C. §§ 1-307 (1994).

[22] 500 U.S at 25.

claim at issue to be waived in favor of arbitration.[23]

Nonetheless, because the arbitration agreement at issue in *Gilmer* was not contained in an individual employment contract, there is some doubt whether the Supreme Court would extend *Gilmer* to cases where the arbitration agreement was contained in an individual employment contract.[24] Indeed, the *Gilmer* Court expressly refused to decide whether a similar result would follow when the arbitration agreement is contained in an employment contract.[25] Therefore, according to Justice Cavanagh, *Gilmer* did not decide the issue presented in this case.[26]

Justice Cavanagh then proceeded to examine the decisions of the lower federal courts that had addressed this issue. Although noting that several courts had enforced arbitration agreements to resolve employment discrimination claims, he noted two cases that suggested a contrary view where the arbitration agreement was contained in an employment contract: *Willis v. Dean Witter Reynolds, Inc.*[27] and *Alford v. Dean Witter Reynolds, Inc.*[28] Both *Willis* and *Alford* distinguished the securities registration form at issue in *Gilmer* from an employment contract.[29] This distinction is crucial because the FAA, the act which favored arbitration of the age discrimination claim at issue in *Gilmer*, specifically exempts "contracts of employment of . . . any . . . class of workers engaged in . . . interstate commerce."[30] Therefore, Justice Cavanagh concluded that there is no clear answer from the federal courts with respect to whether arbitration agreements contained in employment contracts are enforceable.[31]

Justice Cavanagh's examination of the federal case law is unconvincing. It is likely that the majority of federal courts would enforce the arbitration agreement at issue in *Heurtebise*. Several courts, including the courts that

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[23] *See id.* at 26.

[24] *See* Sharona Hoffman, *Mandatory Arbitration: Alternative Dispute Resolution or Coercive Dispute Suppression?*, 17 BERKELEY J. EMPLOYMENT & LAB. L. 131, 131 (1996) ("The enforceability of mandatory arbitration policies contained in employment contracts between employees and their direct employers remains an open question, even after the Supreme Court's 1991 decision in *Gilmer v. Interstate Johnson Lane Corp.*").

[25] 500 U.S. at 25 n.2. The trend among the lower federal courts, however, appears to be that the *Gilmer* decision also applies to those cases in which the arbitration agreement is embodied in individual employment contracts. *See infra* note 29.

[26] *See Heurtebise*, 550 N.W.2d at 248.

[27] 948 F.2d 305 (6th Cir. 1991) (dicta).

[28] 939 F.2d 229 (5th Cir. 1991) (noting that courts should be mindful of the possible distinction between an employment contract and a securities registration form).

[29] 948 F.2d at 312; 939 F.2d at 230.

[30] 9 U.S.C. § 1(1994).

[31] *See Heurtebise*, 550 N.W.2d at 249.

decided *Willis* and *Alford*, have given a very narrow reading to the employment exemption, concluding that it covers only the contracts of those employees who are "actually engaged in the movement of goods in interstate commerce."[32]

The plaintiff in *Heurtebise* performed computer software support work.[33] She was not actually involved in the movement of goods in interstate commerce. Her employment contract would not fall within the FAA's narrow exemption for "contracts of employment of . . . any . . . class of workers engaged in . . . interstate commerce."[34] Therefore, if this case were being decided by a federal court, the mere fact that the arbitration agreement was embodied in an employment contract as opposed to a securities registration form would not preclude the federal court from applying the *Gilmer* decision and enforcing the arbitration agreement.

Nonetheless, even if the federal courts would enforce the arbitration agreement at issue (which they most likely would), Justice Cavanagh would not follow federal precedent in this case.[35] Justice Cavanagh argued that "Michigan . . . has an unwavering history of faithfully defending an aggrieved individual's right to a judicial forum to remedy unlawful

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[32] Asplundh Tree Expert Co. v. Bates, 71 F.3d 592, 601 (6th Cir. 1995). *See also* Matthews v. Rollins Hudig Hall Co., 72 F.3d 50 (7th Cir. 1995); Rojas v. TK Communications Inc., 87 F.3d 745, 748 (5th Cir. 1996); Mago v. Shearson Lehman Hutton, Inc., 956 F.2d 932 (9th Cir. 1992); Albert v. National Cash Register Co., 874 F. Supp. 1324, 1327 (S.D. Fla. 1994). *But see* Long v. Ringling Bros.-Barnum & Bailey Combined Shows, Inc., 9 F.3d 340, 342 (4th Cir. 1993) ("Prior arbitration of claimant's grievance does not foreclose trial *de novo* in the district court." (citing *Alexander*, 415 U.S. at 38)); Mittendorf v. Stone Lumber, 874 F. Supp. 292, 294-295 (D. Or. 1994) (holding that FAA exemption applies to all employment contracts).

[33] *See Heurtebise*, 550 N.W.2d at 245.

[34] 9 U.S.C. § 1 (1994).

[35] Like most states, Michigan will look to federal cases interpreting Title VII of the Civil Rights Act of 1964 when interpreting its own civil rights law. *See* Radtke v. Everett, 501 N.W.2d 155 (Mich. 1993). Justice Cavanagh noted, however, that Michigan courts do not follow federal precedent "when the Michigan statute provides greater protection to victims of discriminatory actions than Title VII provides." *Heurtebise*, 550 N.W.2d at 250 (citing Eide v. Kelsey-Hayes Co., 427 N.W.2d 488 (Mich. 1988).

However, given the United States Supreme Court's recent decision in *Allied-Bruce Terminex Cos. v. Dobson*, 115 S. Ct. 834 (1995), Justice Cavanagh's power to disregard the FAA in a case like the present is in serious doubt. In *Allied-Bruce Terminex*, the Court held that the FAA applies to all contracts within the scope of Congress' broad commerce power. *Id.* at 841. For a discussion of the *Allied-Bruce Terminex* case, see Jay A. Yurkiw, Recent Development, 12 OHIO ST. J. ON DISP. RESOL. 223 (1996).

discrimination."[36] In his opinion, the Michigan Civil Rights Act differs in important respects from federal discrimination law, and these differences would preclude Michigan courts from following federal precedent and enforcing the arbitration agreement.

For example, while federal discrimination law requires an aggrieved individual to exhaust administrative remedies with the Equal Employment Opportunity Commission before bringing suit, the Michigan Constitution specifically rejects the requirement that a plaintiff exhaust administrative remedies with respect to employment discrimination claims brought under Michigan law.[37] In short, Justice Cavanagh would not follow federal case law because "the Michigan constitutional and statutory enforcement scheme for civil rights is significantly different from the statutory enforcement scheme for federal discrimination statutes with respect to an aggrieved individual's access to judicial remedies."[38] Michigan's civil rights law is simply more concerned about assuring victims of discrimination access to court than its federal counterparts.

Finally, Justice Cavanagh argued that the enforcement of a prospective arbitration agreement to resolve a state civil rights claim violated Michigan public policy.[39] Although Justice Cavanagh did not believe that federal case law resolved the public policy issue, he did believe that the *Gilmer* decision provided some guidance. He agreed with the *Gilmer* Court's decision to answer the question presented in that case by looking to legislative intent.[40] Therefore, he looked to the legislative intent behind the Michigan Civil Rights Act to determine whether the arbitration agreement at issue violated Michigan public policy.[41] He also looked to the intent behind the new Michigan Constitution adopted in 1963 as civil rights were prominently discussed during its adoption.[42] However, before making either inquiry he reviewed the Michigan Supreme Court's treatment of civil rights prior to the adoption of the new Michigan Constitution.[43]

More than a half century before Michigan adopted its current Constitution, the Michigan Supreme Court decided *Ferguson v. Gies*.[44] In *Ferguson*, the court held that a victim of unlawful discrimination was

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[36] *Heurtebise*, 550 N.W.2d at 248.

[37] *See id.* at 250 (citing MICH. CONST. art V., § 29). This rejection is also codified in Michigan statutory law. *See id.* (citing MICH. COMP. LAWS § 37.2803 (1985)).

[38] *Id.* at 250.

[39] *See id.* at 258

[40] *See Heurtebise*, 550 N.W.2d at 250.

[41] *See id.*

[42] *See id.*

[43] *See id.*

[44] 46 N.W. 718 (Mich. 1890).

entitled to bring a civil action.[45] Justice Cavanagh viewed the *Ferguson* decision as standing for the proposition that "whenever a particular equal protection right is recognized, whether by constitution, statute, or common law, then fused to that right is the right to pursue judicial relief."[46] This view, he argued, is further supported by the Michigan Supreme Court's decision in *Pompey v. General Motors Corp.*[47] In *Pompey*, the court held that an employee could bring a civil action under the Fair Employment Practices Act,[48] even though the right to bring a civil action was not expressly authorized by the act. This is significant because, in the usual case, the remedy provided for the violation of a statutory right is exclusive. Justice Cavanagh argued that *Ferguson* and *Pompey* underscore the importance Michigan places upon protecting an individual's right to seek relief from unlawful discriminatory acts in a judicial forum.

In 1963, the people of Michigan adopted a new Constitution that contains a section providing for the creation of the Michigan Civil Rights Commission. [49] This section also provides: "Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state."[50] Justice Cavanagh found this section crucial to the resolution of the public policy issue because it protects an aggrieved party's right to proceed directly to court, and, in essence, rejects the requirement that an aggrieved party exhaust her administrative remedies before bringing suit.[51] In other words, this clause "reveal[s] that the role of the judiciary in enforcing civil rights was to remain supreme."[52]

Justice Cavanagh also pointed to the debates surrounding the eventual inclusion of this language as further evidence of the paramount importance placed upon an aggrieved individual's right to seek redress for discrimination in a judicial forum. In particular, he pointed to the debate surrounding the Donnelly Amendment, the predecessor of the above-quoted language.[53] Explaining the importance of rejecting the exhaustion of

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[45] *See id.* Interestingly, the Michigan Supreme Court in *Ferguson* rejected the "separate but equal" doctrine ultimately adopted by the United States Supreme Court in *Plessy v. Ferguson*, 163 U.S. 537 (1896). *See id.*

[46] *Heurtebise*, 550 N.W.2d at 251.

[47] 189 N.W.2d 243 (Mich. 1971).

[48] MICH. COMP. LAWS §§ 423.301-423.311 (replaced by MICH. COMP. LAWS §§ 37.2102 *et seq.* (1985) in 1977).

[49] *See* MICH. CONST. art V., § 29.

[50] *Id.*

[51] *See Heurtebise*, 550 N.W.2d at 254.

[52] *Id.*

[53] *See id.* The Donnelly Amendment provided: "These provisions shall not be construed

administrative remedies requirement, one supporter stated: "I submit that the only place that any rights have ever been protected have been in the courts of this land, and when you start saying the courts of the land may not act, then I am wondering what direction you really want to go, and do you really believe in the democracy and freedom of people . . .".[54]

In addition to the new Michigan Constitution and the debates concerning the Donnelly Amendment, Justice Cavanagh found relevant the fact that the Michigan Civil Rights Act specifically allows aggrieved individuals to proceed directly to court.[55] Together, these facts "reveal that an aggrieved individual's access to judicial remedies is inseparably interwoven with the substantive civil rights and was intended by the people of Michigan to be the lifeblood of keeping those substantive civil rights alive."[56] Justice Cavanagh concluded with the following statement:

> I believe that the right to be free from unlawful discrimination is of highest priority and too important to jeopardize. I further believe that the constitutionally guaranteed direct access to a judicial forum is so interwoven with the enforcement of civil rights in Michigan that we cannot separate them without potentially harming substantive civil rights. Accordingly, I would hold that the Michigan Constitution and our longstanding public policy preclude the enforcement of prospective arbitration agreements in employment contracts [to resolve civil rights claims].[57]

It is uncertain whether Michigan courts will adopt Justice Cavanagh's conclusion, as it was dicta. Regardless, it is unlikely that federal courts will be influenced by his argument because the trend among the federal courts is to apply *Gilmer* to cases in which the arbitration agreement is contained in an employment contract (except for those contracts that fall within the FAA's narrow exemption), and enforce the arbitration agreement.[58]

The larger question is what effect, if any, will Justice Cavanagh's conclusion have on cases arising under the discrimination laws of other states. His arguments are based on facts specific to the history and development of Michigan civil rights law. Therefore, it is doubtful that

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to deny, or enable or allow the denial of, any direct and immediate legal or equitable remedy in the courts of this state, to any person affected thereby." *Id.* (citing 2 Official Record, Constitutional Convention 1961, p. 1999).

[54] *Id.* at 255.

[55] *See Heurtebise*, 550 N.W.2d at 256.

[56] *Id.* at 257.

[57] *Id.* at 258.

[58] *See supra* note 32 and accompanying text.

employees in other states could avail themselves of his reasoning in this respect because the development and history of their state's civil rights law probably varies significantly from that of Michigan's civil rights law.

Yet, a significant portion of his argument is based upon Michigan's rejection of the exhaustion of administrative remedies requirement. Like Michigan, several other states do not require exhaustion of administrative remedies before bringing an employment discrimination claim.[59] Therefore, employees who reside in these states are in a better position to take advantage of Justice Cavanagh's conclusion.[60]

Regardless of the outcome of cases such as *Heurtebise*, there is no escaping the fact that employment discrimination claims are increasingly being resolved through various forms of alternative dispute resolution including binding arbitration. [61] Nonetheless, several commentators have warned of the inherent dangers in compelling employees to arbitrate their employment discrimination claims.[62] For example, arbitral procedures usually provide for minimal discovery. Yet, because employment

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[59] *See* Ward v. City of Pawtucket Police Dep't, 639 A.2d 1379 (R.I. 1994); Green v. City of St. Louis, 870 S.W.2d 794 (Mo. 1994); Jones v. Glenville State College, 433 S.E.2d 49 (W.Va. 1993); Elek v. Huntington Nat'l Bank, 573 N.E.2d 1056 (Ohio 1991); Harrison v. Boston Financial Data Servs., Inc. 638 N.E.2d 41 (Mass. App. Ct. 1994).

[60] *But cf.* Polk County Secondary Roads, Polk County Bd. of Supervisors AFSCME 1868, and AFSCME Int'l v. Iowa Civil Rights Comm'n, 468 N.W.2d 811, 816-817 (Iowa 1991) (holding that a statutory employment discrimination claim is not arbitrable because Iowa law requires an aggrieved individual to first file with the Iowa Civil Rights Commission).

[61] For example, employment discrimination claims have been successfully resolved using both mediation and arbitration. *See* Linda S. Crawford, *The Americans with Disabilities Act: ADR: A Problem-Solving Approach for Business*, 50 APR.-JUN. DISP. RESOL. J. 55, 58 (1995) (In Maine, over a two-month period 30% of the discrimination cases that were referred for mediation were successfully mediated.); R. Gaull Silberman et al., *Alternative Dispute Resolution of Employment Discrimination Claims*, 54 LA. L. REV. 1533, 1557 (1994) (In its pilot mediation program, the Equal Employment Opportunity Commission has reported that over half of the completed mediations have produced an agreement.); Ann C. Hodges, *Dispute Resolution Under the Americans With Disabilities Act: A Report to the Administrative Conference of the United States*, 9 ADMIN. L.J. AM. U. 1007, 1095 n.449 (1996); Robert J. Lewton, *Comment: Are Mandatory, Binding Arbitration Requirements A Viable Solution for Employers Seeking to Avoid Litigating Statutory Employment Discrimination Claims?*, 59 ALB. L. REV. 991, 993 n.3 (1996).

[62] *See* Ronald Turner, *Compulsory Arbitration of Employment Discrimination Claims With Special Reference to the Three A's—Access, Adjudication, and Acceptability*, 31 WAKE FOREST L. REV. 231, 234-235 (1996) (noting that compulsory arbitration of employment discrimination claims "tests the scope and limits of mandated private adjudication imposed upon employees who wish to have their cases heard by the federal courts.").

discrimination is often a subtle practice, to "the extent that discovery is curtailed, the plaintiff's substantive rights may also be limited."[63] Also, arbitration deprives state and federal courts of the important opportunity to consider and interpret the different employment discrimination statutes.[64] As a result, the development of the law of employment discrimination may be impeded.

Although Justice Cavanagh's conclusion in *Heurtebise* does not have the force of law and will most likely not inhibit the further expansion and application of *Gilmer*, it acts as a strong reminder to other courts that there is something unique about discrimination claims, something that differentiates discrimination claims from claims that have traditionally been thought well-suited for binding arbitration.[65] Discrimination, whether based on race, sex, religion, age, national origin or handicap, is the product of ignorance, fear and often hatred and contempt. Its victims suffer a personal injury which goes to the very core of their being. There is definitely a hint of unfairness in compelling an employee to settle his discrimination claim in the manner decreed by the very person who has already shown an inability to play fair. For these reasons, courts should respect the opinion expressed by Justice Cavanagh, and refrain from hastily assuming that employment discrimination claims are subject to mandatory, binding arbitration just like any other commercial dispute.[66]

Matthew D. Miko

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[63] Note, *Agreements to Arbitrate Claims Under the Age Discrimination in Employment Act*, 104 HARV. L. REV. 568, 584 (1990).

[64] *See id.*

[65] *See* Alexander v. Gardner-Denver Co., 415 U.S. 36, 56 (1974) ("[A]rbitral procedures, while well suited to the resolution of contractual disputes, make arbitration a comparatively inappropriate forum for the final resolution of rights created by Title VII.").

[66] For example, the Court of Appeals for the Ninth Circuit held that plaintiffs bringing suit under Title VII can be compelled to arbitrate their discrimination claim only if they knowingly agreed to submit their discrimination claim to arbitration. *See* Prudential Ins. Co. of America v. Lai, 42 F.3d 1299, 1304 (9th Cir. 1994). Also, the American Arbitration Association has devised special rules for the arbitration of employment discrimination claims. *See* AMERICAN ARBITRATION ASS'N, EMPLOYMENT DISPUTE RESOLUTION RULES (1993).